

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUCREZIA GISONDA and U.S. POSTAL SERVICE,
POST OFFICE, Hauppauge, NY

*Docket No. 99-2258; Submitted on the Record;
Issued October 16, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that she sustained a low back injury on January 11, 1998 in the performance of duty, causally related to factors of her federal employment.

On January 15, 1998 appellant, then a 50-year-old casual clerk working on the linear sorter, filed a claim alleging that on January 11, 1998 she sustained back injury after lifting a bucket and a box of oranges. She claimed that she started feeling back pain on January 13, 1998, and first sought medical treatment on January 15, 1998.

In support of her claim, appellant submitted a January 15, 1998 Form CA-17 duty status report in which the employing establishment provided the date of injury as being January 11, 1998, and the description of injury as "Employee claims she was injured Sunday while lifting trays of mail but felt pain only on Tuesday." The form was completed by a Mid Island Hospital emergency medicine physician and internist, Dr. Rosalie Uy Megur, who noted clinical findings of "lumbar strain, mild spasm [without] [illegible]" and who noted the diagnosis due to injury as "Strain back." Dr. Megur indicated that appellant could return to work with restrictions noted as no lifting, kneeling, bending, stooping and twisting.

The dictated file summary of appellant's January 15, 1998 emergency department treatment by Dr. Megur noted that appellant complained of lower back pain for two days prior to her arrival, that she had a history of heavy lifting, that the injury reportedly occurred while at work after lifting a heavy box, that she experienced back pain two days after the lifting event, and that she had been seen there four days earlier on January 11, 1998 for a subconjunctival hemorrhage after lifting the heavy box. Dr. Megur indicated that appellant had a previous history of an August 1997 motor vehicle accident which caused back injury, and that the symptoms were aggravated by exertion. Physical examination was noted to be within normal limits.

An unsigned employing establishment health unit note dated January 15, 1998 was also submitted. The note indicated that appellant had reported to the Mid Island Hospital on January 11, 1998 for the broken blood vessel in her left eye, and claimed that the emergency room physician stated that her left eye broken blood vessel was “[secondary] to lifting heavy mail buckets.” Assessment was noted as “pos[sible] low back sprain.”

Also submitted was a January 20, 1998 Form CA-17 completed by Dr. Steven Kashin, a Board-certified orthopedic surgeon, which contained the employing establishment-provided history as noted above and which indicated clinical findings as “Pain [lumbosacral] [and] [sacroiliac] area [with] direct pressure [and] motion limited lower back motion due to pain.” Dr. Kashin noted as the diagnosis due to injury “Sprained neck [and] lower back, coccygodynia,” and he noted that appellant could return to work with restrictions of no lifting, climbing, kneeling, bending, stooping, twisting, pushing, pulling, or reaching above the shoulder, and with no operating of machinery. Later submitted Forms CA-17 stated similarly.

By letter dated January 22, 1998, the employing establishment noted that appellant had filed a separate claim for left eye injury occurring on the same day, January 11, 1998. The employing establishment indicated that a coworker had pointed appellant’s left eye injury out to her and that her ophthalmologist had recommended a five-pound lifting limit. It requested further investigation by the Office of Workers’ Compensation Programs.

Also by letter dated January 22, 1998 appellant’s supervisor noted that on January 11, 1998 appellant had come to him pointing out that her eye had turned red as she was “lifting trays into Post Cons.” The supervisor noted that to his knowledge the trays did not exceed 25 pounds on the average and that at that time appellant was not complaining of back pain.

By letter dated March 19, 1998, the Office advised appellant that additional information was needed, and it stated that the employing establishment was controverting her claim as “[they] feel your injury did not occur during your employment.”

In response appellant submitted a March 28, 1998 letter stating as follows:

“I was working at the linear sorting area and lifting heavy buckets of flats, boxes of oranges, and queen size trays of mail. These items weighed 30, 40 or 50 pounds each. The work consisted of lifting these heavy pieces above my shoulders and onto a post-con (mail transportation equipment). This post-con was full and weighed approximately 300 [to] 500 pounds. I proceeded to pull the post-con 300 [to] 400 feet onto the loading dock. While completing this task I injured my eye due to the heavy lifting....

“The following morning I experienced a slight pain in my back, neck, as well as headaches. I did not immediately report this to my supervisor because the pain was minimal and I hoped it would diminish. However it did not. I was also concerned that this reported injury would lead to my dismissal because I am a temporary employee. On January 15, 1998 I reported the injury to supervisors Dimitri Morse and Al Devivo....”

A medical progress note dated March 12, 1998 from Dr. Kashan indicated that appellant's back was the same, that she had new upper back pain as well, and that she had lower back pain when opening heavy doors.

Radiographic imaging of appellant's back, neck and head revealed only a right-sided calcified uterine leiomyoma, congenital fusion of C4-5 and a two centimeter right maxillary sinus retention cyst. Physical therapy reports also indicated that appellant had had a motor vehicle accident in July 1997, sustaining neck and low back pain which lasted several days.

Dr. Kashan submitted further office medical progress notes at the Office's request which noted on January 20, 1998 that appellant was "lifting heavy stuff at work on Sunday, January 11, 1998 busted a vessel in her left eye. ... A couple of days later [she] experienced pain lower [and] up to the neck." Dr. Kashan noted that physical examination revealed "Pain [lumbosacral] [and] S1 area with direct pressure [and] motion. Limited lower back motion due to pain...." and diagnosed "Sprained neck. Sprained lower back. Coccygodynia." On March 12, 1998 Dr. Kashan noted "good ROM (range of motion) lower back but tender on motion, tight back of neck with motion." On April 9, 1998 Dr. Kashan's physical examination of appellant revealed "[P]ain neck with motion. Pain lower back [and] sacrum with motion."

By decision dated July 16, 1998, the Office rejected appellant's claim finding that the evidence of record was insufficient to establish a relationship between the injury and her medical condition. The Office found that the medical evidence did not explain how her pains in her lower back and neck resulted from her activities two days before.

By letter dated August 5, 1998, appellant requested an oral hearing on the rejection of her claim. In support appellant submitted a July 30, 1998 report from Dr. Michael P. Carroll, a Board-certified orthopedic surgeon, which indicated that he had treated appellant following her 1997 motor vehicle accident, and that, "after the last September, she had completely recovered from the accident and was perfectly fine until at work in the [employing establishment] while lifting a 50-pound bucket of mail, she suffered a new injury to her back. This injury occurred in January and she began seeing Dr. Kashan for treatment." Dr. Carroll noted that upon physical examination appellant had "pain in the upper lumbar spine aggravated on forward flexion to more than 70 degrees," and he diagnosed "Acute lumbar sprain, work related." He reiterated this diagnosis in a July 30, 1998 report.

A February 17, 1998 report from Dr. Mauro Gasparini, an internist, noted as follows:

"[Appellant] was in normal state of health until January 11, 1998 when [she] apparently lifted a heavy object as part of her work. [Appellant] at that time experienced conjunctival hemorrhage in the left eye from her straining and lifting the heavy package. [Appellant] at that time developed a headache and neck spasms."

Dr. Gasparini diagnosed cervical spasm, headache status post conjunctival hemorrhage and lumbar sacral spasm.

In a medical progress note dated October 22, 1998, Dr. Carroll noted that appellant continued to have back pain after rigorous activity, with pain starting in her back and radiating into her buttock, but not sciatic in nature, and he opined: "As far as the history is concerned, [appellant] sustained the injury at work but did not report it until two days later or seek medical care for one week. I feel this is totally consistent with what I found on my examination."

A hearing was held on February 23, 1999 at which appellant testified. Appellant testified that on January 11, 1998 she got pulled to work in the package sorting area when she had to lift heavy stuff like parcels and magazines. She claimed that this lifting was much too heavy for her, but that she did four hours of mandatory overtime every night as United Parcel Service was on strike. Appellant reiterated her story about developing the conjunctival hemorrhage while working, claimed that the following morning, January 12, 1998, when she got out of bed she started to feel pain in her back, but indicated that she did not say anything because the pain was very mild. She testified that the pain did not go away, and that, on Tuesday, January 13, 1998, she advised her husband that her back hurt, but that he warned her that, if she complained about her back and reported another injury, the employing establishment would fire her because she was casual. After speaking with friends appellant decided to wait to report the back pain, hoping that it would go away before then, but that on Thursday January 15, 1998 she was really in pain and had to seek medical attention.

In support of her claim, appellant submitted an August 11, 1998 note from her Board-certified osteopathic gynecologist, Dr. Aaron David, which stated: "It is doubtful that the fibroid is causing the back pain."

In an August 20, 1998 note, Dr. Kashan opined: "[Appellant] presented to the office on January 20, 1998 and based on the history reported and the physical exam[ination] on that date January 20, 1998 the injuries could causally be related or could aggravate a preexisting condition."

A February 18, 1999 note from Dr. Carroll noted that magnetic resonance imaging (MRI) demonstrated a herniated disc at L4-5 and he opined: "I feel this is related to her accident and developed as a result of her work-related injury." He noted that upon examination appellant had pain on full forward flexion at 70 degrees, that hyperextension and lateral bending reproduce back pain, and that straight leg raising produced back pain but no sciatica. Dr. Carroll diagnosed herniated disc with persistent back pain.

By decision dated April 15, 1999, the hearing representative affirmed the July 16, 1998 rejection of appellant's claim finding that the medical evidence of record was not sufficient to establish that appellant sustained a neck or back injury related to lifting at work on January 11, 1998. The hearing representative found that the record supported that appellant was lifting heavy packages on January 11, 1998 as alleged, but that the signatures of Drs. Megur and Kashan on the January 15 and 20, 1998 Forms CA-17, respectively, were illegible and that their "diagnos[es] due to injury," which were noted as "Strain back" and "Sprained neck [and] lower back, coccygodynia," did not address causal relation due to injury.

The Board finds that this case is not in posture for decision.

In this case, the Office has accepted that appellant was lifting heavy packages on January 11, 1998. Appellant has also provided an explanation as to why she waited a few days to file a back injury claim, with her onset of symptoms being gradual, with her hopes that the back pain would resolve, and with her reluctance to report injury due to fear of being fired. Dr. Megur opined on the date appellant first sought medical treatment, January 15, 1998, based upon the date and history of injury as provided on the Form CA-17 by the employing establishment, that appellant's diagnosis due to that injury as described was "Strain back," based upon clinical findings of "lumbar strain, mild spasm." Dr. Megur further noted that appellant complained of lower back pain for two days prior to her arrival, that she had a history of heavy lifting, that the injury reportedly occurred while at work after lifting a heavy box, that she experienced back pain two days after the lifting event, and that she had been seen there four days earlier on January 11, 1998 for a subconjunctival hemorrhage after lifting the heavy box.

Dr. Kashan opined on January 20, 1998, based upon the date and history of injury as provided on the Form CA-17 by the employing establishment, that appellant's diagnosis due to that injury as described was "Sprained neck [and] lower back, coccygodynia," based upon clinical findings of "Pain [lumbosacral] [and] [sacroiliac] area [with] direct pressure [and] motion limited lower back motion due to pain."

Dr. Carroll opined on July 30, 1998 that appellant had completely recovered from her 1997 motor vehicle injury by September of that year, and was perfectly fine until the January 1998 bucket lifting which caused a new injury. He diagnosed "acute lumbar strain, work related." Dr. Carroll later noted that appellant sustained injury at work but did not report it until two days later and did not immediately seek medical care, and he indicated that this was totally consistent with what he found on his examination. Dr. Carroll later opined that appellant's L4-5 herniated disc was related to her work accident and developed as a result of that injury.

Dr. Gasparini noted that appellant was in a normal state of health until January 11, 1998 when she lifted a heavy object as part of her work. He diagnosed cervical spasm, headache status post conjunctival hemorrhage and lumbar sacral spasm.

Proceedings under the Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹ In the instant case, appellant's treating physicians' reports constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship, that is sufficient to require further development of the case record by the Office.² Additionally, there is no opposing medical evidence in the record.

The case is therefore being remanded to the Office for further development, including the preparation of a statement of accepted facts,³ and the formulation of the specific questions to be

¹ *William J. Cantrell*, 34 ECAB 1223 (1983).

² *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

³ Appellant's supervisor's limited statement that "to his knowledge" the trays appellant was lifting did not exceed 25 pounds, is not sufficient to establish that as fact, as appellant implicated also lifting boxes of oranges and buckets

addressed, to be followed by a referral, accompanied by the complete case record, to an appropriate specialist for a second opinion as to whether appellant sustained a back or neck injury on January 11, 1998 in the performance of duty.

Consequently the decisions of the Office of Workers' Compensation Programs dated April 15, 1999 and July 16, 1998 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, DC
October 16, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

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